

1976

State of Utah v. Douglas Rex Young : Brief of Respondent

Utah Supreme Court

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BRIEF

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BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

DOUGLAS REX YOUNG,

Defendant-Appellant.

Case No.
14531

BRIEF OF RESPONDENT

APPEAL FROM A CONVICTION IN THE THIRD
JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE PETER F. LEARY, JUDGE,
PRESIDING

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-vs- Case No. :
DOUGLAS REX YOUNG, 14531 :
Defendant-Appellant. :
:

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a conviction of aggravated robbery in the Third District Court in and for Salt Lake County, State of Utah, the Honorable Peter F. Leary, presiding.

DISPOSITION IN THE LOWER COURT

Appellant was tried and convicted by a jury of the crime of aggravated burglary, a violation of Utah Code Ann. § 76-6-203 (1973 as amended). Following his conviction, appellant was sentenced to the indeterminate term of five years to life in the Utah State Prison, where he is presently incarcerated.

RELIEF SOUGHT ON APPEAL

Respondent seeks the affirmation of the verdict and judgment of the court below.

STATEMENT OF FACTS

At 12:30 p.m. on November 13, 1975, Mr. John Snyder, manager of an apartment building, and his wife had just returned home. Upon entering the apartment building they passed a man in the hallway who was a stranger to them and who was later identified as appellant (T.24,25). After entering their apartment, which is on the top floor of the building, Mr. Snyder immediately went out on his balcony (T.25) because he was suspicious of the stranger being in the building (T.38). While on the balcony, he heard a jaring noise coming from the balcony area of apartment number three, belonging to Miss Ross (T.26).

Mr. Snyder instructed his wife to call the police (T.26). He then left his apartment, ran out of the building and around to the patio area of apartment number three. Through the closed sliding glass door that separates the patio area from the interior of the apartment Mr. Snyder observed a man, whom he identified to be the appellant, dash out of a bedroom inside the apartment (T.27). The man jumped up on the kitchen counter and tried, with no success, to open a window

on the opposite side of the apartment (T.28). Mr. Snyder then ran around to the front of the building, looked through the window and observed an empty apartment. He ran to the front of another building and observed the appellant running west down an alleyway. Mr. Snyder pursued him across two lawns, an alleyway and down a driveway and then overtook and subdued him (T.30).

Without striking appellant, Mr. Snyder forced appellant's arms behind his back and escorted him to the front lawn of Mr. Snyder's apartment building (T.31). Mr. Snyder testified that in order to keep the appellant from leaving before the police arrived (T.47) he instructed appellant to lay on the lawn. When appellant refused to do so Mr. Snyder forced him to his knees by applying pressure on his arms (T.32). According to Mr. Snyder, at no time did he try to force appellant's face into canine excrement which was on the grass (T.48).

Mrs. Snyder then came out of the apartment building and said she had called the police. At this point appellant struggled with Mr. Snyder, freed himself and in the scuffle he punched Mr. Snyder in the face, breaking his nose (T.50). Mrs. Snyder then grabbed appellant's hand and realized that appellant had drawn a knife from his jacket; appellant then freed himself

from Mrs. Snyder. After threatening Mr. Snyder to stay away or he'd kill him (T.34), appellant ran across the street and drove away, but not before Mr. Snyder was able to obtain the vehicle license number. Appellant was subsequently arrested and charged with aggravated burglary.

ARGUMENT

POINT I

THE CONDUCT OF THE APPELLANT DOES FALL WITHIN CONDUCT SOUGHT TO BE PROSCRIBED BY THE LEGISLATURE IN ENACTING UTAH CODE ANN. § 76-6-203 (1973, AS AMENDED).

A. Section 76-6-203 does apply to appellant because he was "fleeing from a burglary" at the time of the aggravating circumstances.

Appellant argues that he never committed a burglary in Miss Ross' apartment and therefor could not have been "fleeing" from a burglary at the time of the admitted altercation between himself and Mr. Snyder. Whether or not appellant committed burglary was for the jury to decide. It is clear from the evidence presented, including an eyewitness that saw appellant before, during and after the burglary, that a reasonable jury would conclude that appellant had committed the burglary. Such a reasonable conclusion should not be disturbed on appeal. State v. Woolery, 93 Ariz. 76, 378 P.2d 751.

Appellant further argues that his actions do not fall within the scope of section 76-6-203 because his "flight" had been terminated by Mr. Snyder prior to the altercation which aggravated the crime. Such an argument assumes a much more confining definition of "fleeing" than is justified. No specific guidelines are given in the statute as to what circumstances might terminate flight from a burglary, but there are several factors which would suggest a reasonable interpretation of legislative intent.

First, the general definition for "flee" or "flight" is very broad. For example in Black's Law Dictionary, Revised Fourth Edition (1968), the definition of flight is "the evading of the course of justice by voluntarily withdrawing one's self in order to avoid arrest or detection. . . ." Certainly section 76-6-203 would confine flight to a reasonable proximity in time and place to the burglary, but any further limitations would render this section of the statute ineffective. It is therefore illogical to accept the most narrow, most literal definition which is suggested by appellant.

Also, it is clear that if the legislature had wanted to be more specific and therefore less inclusive of the activity to be proscribed they could and would have specifically defined their terms or would have

utilized more descriptive language. An example of such specificity can be seen in Utah Code Ann. § 76-6-302 (1973, as amended) in which the crime of aggravated robbery is defined. That statute specifies that:

"An act shall be deemed to be 'in the course of committing a robbery' if it occurs in an attempt to commit, during commission of, or in the immediate flight after the attempt or commission of a robbery" (Emphasis added).

This strongly suggests that section 76-6-203, the statute in question, is much more inclusive than suggested by appellant since no special adjective is utilized to restrict its limits.

Respondent contends that appellant's altercation with Mr. Snyder did occur while he was "fleeing from a burglary" and therefore is proscribed by section 76-6-203. Although appellant's efforts to leave the scene of the burglary were temporarily interrupted by a brief submission to Mr. Snyder's strength he was still taking actions which constitute "fleeing" within the meaning of the statute. With relatively little effort and within a short timespan appellant secured his total withdrawal from the scene.

B. Section 76-6-203 does apply to the case at bar because the pocket knife used in this case was a deadly weapon.

According to Utah Code Ann. § 76-1-601, (1973, as amended) "a deadly or dangerous weapon" means "anything that in the manner of its use or intended use is likely to cause death or serious bodily injury." Respondent contends that the knife that appellant brandished in the case at bar fits within this description. Taking notice that the appellant pulled a 4-5 inch bladed knife in the midst of a physical bout with three people, when tempers were hot and anxiety was very high one can conclude that the manner in which appellant used the knife was likely to cause serious bodily injury. If the Snyders had not noticed the knife as quickly as they did and had not backed away from it, it is likely that someone would have been severely stabbed during a continuing scuffle.

The statute does not require that serious bodily injury or death must result from an instrument before it will fall under the statutory definition of "dangerous weapon"; it requires only that such result is likely. As shown above, such a result was likely in this case.

Appellant cites Blout v. State, 376 S.W. 2d 844 (Tex. Crim. App. 1964) for the proposition that courts have refused to characterize knives as dangerous weapons. Two points need to be made about this conclusion. First,

Blout dealt with a case of assault with intent to murder. The court thought the necessary intent for such a crime could be established if the weapon used was deadly per se or if the wounds inflicted would infer that such a weapon had been used. In this case no such intent problem exists.

The weapon utilized in Blout was a 2 1/4 inch bladed pen knife which the court refused to find dangerous per se. The 4-5 inch bladed knife used by appellant does not necessarily need to be deemed dangerous per se either, but it certainly became a dangerous weapon when the appellant used it in the manner he did.

C. The injury to Mr. Snyder was sufficient to justify the conviction of aggravated burglary.

Once again a thoughtful look at the appropriate statutes demonstrates that appellant's argument is without merit.

Utah Code Ann. § 76-6-203 (1973, as amended) states, in part, that a person is guilty of aggravated burglary if in fleeing from a burglary the actor "causes physical injury to any person who is not participating in the crime." Utah Code Ann. § 76-1-601(8) (1973, as amended) supplements this by defining "bodily injury" to mean "physical pain, illness or any impairment of physical condition". Appellant broke Mr. Snyder's

nose by hitting him in the face during the struggle. A broken nose certainly causes physical pain and can cause physical impairment.

Respondent contends that the legislative intent was to protect all innocent citizens from any physical harm which could be caused by a burglar or fleeing burglar. A broken nose incurred while trying to subdue a fleeing felon undoubtedly falls within the type of injury that the legislature was trying to protect against.

POINT II

THE APPELLANT WAS NOT DEPRIVED OF A FAIR TRIAL BY THE TRIAL COURTS REFUSAL TO GIVE THE PROFERRED JURY INSTRUCTION REGARDING THE USE OF FORCE IN A SELF-DEFENSE SITUATION.

Although an appellant is entitled to have his theory of the case presented to the jury by way of proper instructions, he is not entitled to rewrite or misconstrue the law in order that his theory might be considered valid.

Utah Code Ann. § 76-2-402(2)(c) (1973 as amended) states that a:

" . . . person is not justified in using force under the circumstances specified in paragraph (1) (i.e. self defense), if he is attempting to commit, committing or fleeing after the commission or attempted commission of a felony."

The intent of this statute could not be more clear; those who are participating in felonies have relinquished their rights to justifiably defend themselves. If they utilize any force while perpetuating or fleeing from such a crime they do so at the risk of imposition of additional sanctions. Appellant admits that the instructions given in this matter "were correct assertions of the law as applied to usual cases." (Appellant's brief, p. 12). Respondent contends that there is nothing so unusual in the present case to require an exception to the law as written.

Even if one concludes that an exception should be allowed in this situation, under no circumstances would appellant have been justified in brandishing a 4-5 inch bladed knife. Under section 76-2-402(1) a person is justified in using force which is intended or likely to cause death or serious bodily injury only if he believes that that force is necessary to prevent death or serious bodily injury to himself or a third person.

As explained in Point I above, the manner in which appellant used the knife was likely to cause serious bodily injury. Since the force used by Mr. Snyder was obviously not sufficient to put appellant in reasonable fear of death or serious bodily injury the use of the knife was unjustified and illegal. A

theory based on illegal actions was correctly not put before the jury during instructions.

Assuming, arguendo, that the court concludes that this instruction should have been given there is a final reason why failure to do so did not deprive appellant of a fair trial. This court has held that on an appeal from a conviction it is obliged to view evidence and whatever inferences which can be fairly and reasonably drawn therefrom, in accordance with the trial court's finding of guilty. State v. Simpson, 541 P.2d 1114.

Adhering to this obligation in the present case the court must certainly conclude that the force utilized by Mr. Snyder to subdue a fleeing felon was necessary and reasonable. According to Mr. Snyder he pursued appellant for a short distance, tackled him to the ground and then without any undue harshness grabbed appellant's arms behind his back and escorted him to the front of the apartment building (T.31). Once they arrived at the front of the building Mr. Snyder felt it best to try and put appellant in a prone position. "I realized it may be a few minutes before the police arrived and I thought if I put him in a lying down position, he wouldn't be able to jump up and flee very quickly. . ." (T.47). Such reasoning

is very understandable considering appellant had already tried to leave the area. Mr. Snyder did not punch the appellant until after appellant had struck him (T.50). The use of such force when trying to effect an arrest was reasonable and is condoned under Utah Code Ann. § 76-2-403 (1973 as amended). Accepting this conclusion it would follow that failure to give the proffered jury instruction as to self defense against unreasonable force, even if otherwise justified, did not put appellant at a substantial disadvantage or lead to an unfair trial since unreasonable force was not used against appellant. Therefore, such failure should not cause a reversal. State v. Valdez, 19 Utah 2d 426, 432 P.2d 53.

CONCLUSION

For the above reasons, respondent respectfully requests that the conviction of the lower court be affirmed.

Respectfully submitted,

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